IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11574 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUMATIBEN KESHRISINH DHARIA

Versus

TALUKA DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 11574 of 2000

MR MA SAPA for Petitioner No. 1

MS SEJAL K MANDAVIA for Respondents No. 1-2

MR KG SHETH, AGP for Respondents No. 3-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/01/2002

ORAL JUDGEMENT

#. By filing this petition, the petitioner has prayed for necessary directions against the respondents

directing the respondents to grant family pension to the petitioner. The father of the petitioner was serving as Talati-cum-mantri and he retired from the said post on 8.11.1971. Thereafter, he died on 2.10.1987. Thereafter, the mother of the petitioner was granted the benefit of family pension till her death. It is not in dispute that the mother of the petitioner died on 29.5.1999. After the death of her mother, the petitioner has applied for family pension on the ground that she is physically handicapped and that therefore, she may be given the benefit of family pension. An application to that effect was made on 12.7.1999. It seems that, along with the application, she has also submitted the certificate of the Civil Surgeon, Bharuch. The said certificate is produced at page 31 - Annexure-M. The Civil Surgeon has stated in the said certificate that the petitioner is having permanent partial disability. In spite of that application which was accompanied with the medical certificate of the Civil Surgeon, the petitioner was not given the benefit of family pension by the department in view of the fact that the aforesaid certificate was not complete and it is not stated in the said certificate that the petitioner is physically handicapped to such an extent that she cannot earn regular livelihood. The petitioner subsequently submitted another certificate dated 26.6.2001, copy of which is produced on record today, wherein the Civil Surgeon has given the certificate about the disability of the petitioner. On the basis of the aforesaid certificate, subsequently, the benefit of family pension is already given to the petitioner with effect from 16.10.2001 by order dated 6.12.2001, copy thereof is produced by the petitioner on record today.

#. Therefore, so far as the question about family pension is concerned, since the department has already released the said benefit, it is not necessary to give any directions. However, it is submitted by Mr.Sapa, learned advocate for the petitioner, that since the petitioner had already applied for family pension along with the certificate of the Civil Surgeon as back as on 12.7.1999, the benefit of such family pension should have been given from that date and not from 6.10.2001.

#. On behalf of the department, affidavit-in-reply has been filed by Mr.V.M.Shah, Deputy Director which is at page 32 in the compilation. It is stated in reply that, as per the Government Resolution dated 6.10.1999 of the Finance Department, children of the pensioners are not entitled for family pension. However, it is further stated in the reply that in view of necessary

clarifications made vide letter dated 22.11.2000 which is issued by the Finance Department, the benefit of family pension can be given to the physically handicapped children of pensioners provided that they should obtain the certificate to that effect. The said clarification of the Finance Department is produced on record at Annexure-C along with the affidavit in reply. As per the said clarification, physically handicapped children of the Government servant will also be entitled to the benefit of family pension from the date of producing the medical certificate about physical disability. In view of the aforesaid circular, the petitioner has already been paid family pension with effect from 6.10.2001 on receiving second certificate from the Civil Surgeon.

#. Mr.K.G.Sheth, learned AGP, on the other hand argued that since the earlier certificate was not complete, after receiving fresh certificate, the benefit of family pension has been given vide order dated 6.12.2001.

#. Considering the facts and circumstances of the case, I am of the opinion that the petitioner applied for family pension on 12.7.1999 and at that time, she had also produced the medical certificate of the Civil Surgeon and it cannot be said that she had not produced the medical certificate at the time when she gave such application. It was the duty of the Civil Surgeon to give proper certificate at the relevant time when he examined the petitioner to find out her physical disability. It is not a case where the petitioner had applied for family pension without any such certificate in the year 1999. If the Civil Surgeon had not given the proper certificate and ultimately if the additional certificate is given, it cannot be said that the petitioner gave such certificate for the first time in the year 2001. Simply because the Civil Surgeon might not have given the exact certificate, is no ground not to give the said benefit to the petitioner from the date on which she has applied. In any case, now it is proved beyond doubt that the petitioner is physically handicapped and that her disability is such that she cannot earn her livelihood. The said fact is fortified by the decision of the State Government by releasing the family pension in her favour. In any case, once the Civil Surgeon had issued the certificate in 1999 and when such certificate is issued to the petitioner by the Civil Surgeon for the specific purpose of family pension, it is not for the petitioner to find out as to what should be the exact wording of such certificate. In my view, therefore, there is absolutely no justification in not releasing the family pension in favour of the petitioner

from the date of her application i.e. 12.7.1999, especially when along with her application, the certificate issued by the Civil Surgeon was annexed. It is also not in dispute that the petitioner is physically handicapped and she cannot earn her livelihood and on that basis ultimately the department has released the family pension to the petitioner by order dated 6.12.2001. Under these circumstances, the action of the respondents in not releasing the family pension from the date of the application, i.e. 12.7.1999, is absolutely arbitrary and illegal. The petitioner is entitled to the said benefit from the date of her application, i.e. from 12.7.1999.

#. In view of what is stated above, the petition is allowed and the respondents are directed to grant such benefit of family pension from 12.7.1999, i.e. the date of her application. It is clarified that, whatever benefit which is required to be given to the petitioner, may be given as early as possible and latest by 31.3.2002. Rule is made absolute to the aforesaid extent with no order as to costs.

(P.B.Majmudar,J)
(pathan)